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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 5th November 1952

No. 19/44/52-Elec.III.—WHEREAS the election of Shri A. M. Thomas as a member of the House of the People from the Ernakulam Constituency of that House has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Padmanabha Menon of Pachalam, Ernakulam;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said petition, has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, ERNAKULAM.

ELECTION PETITION No. 44 of 1952

Coram:

Shri P. K. Subramania Iyer, B.A., B.L.—*Chairman.*

Shri M. S. Menon, M.A., Barrister-at-Law } *Members of the Election*
Shrimati Anna Chandy, M.A., B.L., } *Tribunal.*

In the matter of the Representation of the People Act, 1951.

and

In the matter of the Election petition presented thereunder by
Padmanabha Menon, son of Moorkanat Kochunarayani
Amma, residing at Pachalam, Ernakulam—*Petitioner.*

Versus

1. A. M. Thomas, B.A., B.L., Member of Parliament, Ernakulam.
2. Stanley P. Luiz, Kalamassery, Always

} *Respondents.*

ORDER

The petitioner is one of the two defeated candidates at the recent election to Parliament from the Ernakulam Parliamentary Constituency. The first respondent is the returned candidate and the second respondent is the other unsuccessful candidate at that election.

2. A copy of the petition together with a copy of the list of particulars was sent to both the respondents by registered post. The first respondent accepted service and entered appearance. The second respondent, however, refused to accept the communication from the Tribunal and it was returned with the endorsement: "Refused. Returned to Sender". We were satisfied that the service was proper and ordered that the trial of the petition should proceed *ex parte* against respondent No. 2.

3. The publication in the Official Gazette contemplated by sub-section (1) of Section 90 of the Representation of the People Act, 1951 was also duly effected and the text of the petition and the list of particulars appeared in the *Gazette of India*, Extraordinary, Part I, Section 1, dated the 18th July 1952.

4. The petitioner seeks to set aside the election on the ground of undue influence by the Catholic clergy and the relief claimed is a declaration to the effect that the election is wholly void.

5. Under section 84 of the Representation of the People Act, 1951, a petition may claim any one of three declarations:

- (a) that the election of the returned candidate is void;
- (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected;
- (c) that the election is wholly void.

In the absence of any prayer for a declaration coming under (a) or (b) above, we ruled at the hearing on the 13th September 1952 that no question relating to the returned candidate's connivance in the commission of any corrupt practice arises for consideration and that the trial should be confined to the determination of the following issues:—

1. Was any undue influence exerted by the six persons mentioned in paragraph 5 of the list?
2. Was Ex. A published before the date of the election?
3. Was Ex. B widely circulated in the Constituency?
4. Whether the publication and circulation of Exs. A and B amount to the exercise of undue influence?
5. Has undue influence so extensively prevailed at the election as to render it not a free election?
6. Whether the election is liable to be declared wholly void as claimed in the petition?
7. What is the proper order as to costs?

6. Twenty-nine witnesses were examined by the petitioner and twelve on behalf of the respondent. Exs. A to H and I to XIV were also marked. The record of the entire evidence and the hearing of the arguments were completed in less than 20 sittings and we would like to record at the very outset our appreciation of the way in which the petitioner who appeared in person and the advocates who appeared for respondent No. 1 conducted this case and of the co-operation we received from them all in ensuring a speedy disposal.

7. *Issue No. 2.*—Ex. A is a pamphlet by one Fr. Archangel who has not been examined in the case. The oral evidence to prove that the pamphlet was published before the date of the election consists of the testimony of sixteen witnesses: Pws. 4, 6 to 18, 25 and 29. There is also the oral evidence of the respondent and of C.P.Ws. 2, 4 to 7 and 9 to 11, to the effect that they have not seen the pamphlet before the election and that if it was published and distributed as alleged by the petitioner and his witnesses, there was every likelihood of their having seen it.

8. We have considered carefully the oral evidence of these witnesses and of Pws. 26 and 27 and C.P.W. 1, the manager, clerk and foreman of the press in which Ex. A was printed, and have come to the conclusion that it is not sufficient to base a definite finding that Ex. A was or was not published before the date of the election.

9. There is some internal evidence in Ex. A which would indicate that the author intended it to be an electioneering pamphlet. From the circumstance that the "Imprimi Potest" was obtained at Trivandrum on the 2nd December 1951 and the "Imprimatur" at Ernakulam on the very next day, it is also possible to argue, as the petitioner did, that Fr. Archangel had no ideas of wasting any time. As against this, however, is the fact that not a single copy of the many alleged to have been distributed prior to the date of the election has been produced before us. There is also the fact that the petitioner's statement that he protested against the publication at a public meeting on the 9th December 1951 stands uncorroborated either by a newspaper report or the oral testimony of any person who attended the meeting.

10. In view of what is stated above, the only course open to us is to confine ourselves to the documentary evidence on the subject, namely, Exs. IV to X. The earliest date to which they and the evidence of C.P.W. 8, the Prior of the Sacred Heart Monastery, Thevara, will take us is the 3rd January 1952, a date considerably subsequent to the election which was on the 17th and 18th December 1951. It follows that the issue has to be decided against the petitioner and we find accordingly.

11. Issue No. 4.—The part of this issue which relates to the publication and circulation of Ex. A is covered by our finding on issue No. 2. We have held that it has not been proved that Ex. A was published prior to the election and in the light of that finding the question as to whether the publication and circulation of Ex. A would amount to the exercise of undue influence does not arise for consideration.

12. Ex. B is a copy of the issue of the "Sathyadeepam", a weekly newspaper owned by His Grace the Archbishop of Ernakulam, dated the 12th December 1951 and the passage complained about has been marked by us as Ex. B(1). It consists of the answers given by Their Graces the Archbishop of Ernakulam, and the Bishops of Quilon, Kottayam and Palai to the question: "Who are they for whom you should not vote?"

13. The freedom of elections is a fundamental axiom of representative Government and the source of the Indian law on the subject is that ancient patrimony of democratic ideas which is the heritage of Britain. The earliest British enactment for ensuring the purity of elections is as old as 1275 when a statute of Edward I enacted that because elections ought to be free "the King Commandeth, upon great forfeiture, that no man by force of arms, nor by malice or menacing, shall disturb any to make free election".

14. The development of the Indian Electoral law, however, has been distinct and separate from that of England, the Indian legislators having adopted some and discarded others of the English provisions. But on the question with which we have to deal, the question as to when clerical influence degenerates into undue influence by the clergy, the great Irish cases, reported in O'Malley and Hardcastle are of paramount importance.

15. The effect of those decisions is clearly stated in the following paragraph from Parker's "Election Agent and Returning Officer", 5th edition (1950), page 305:—

"All clerical or spiritual influence is not, however, undue. In the proper exercise of their legitimate influence, priests and clergy may lecture the people, and address their congregations upon the conflicting claims of the different candidates, even in their chapels (Galway, 1 O'M. & H. 307); they may counsel, advise, recommend, entreat, or explain why one candidate should be preferred to another (Longford, 2 O'M. & H. 16); for a priest is a citizen, and entitled to have his political opinions, and to exercise his legitimate influence legitimately (Tipperary, 2 O'M. & H. 34). So also if priests believe that a spirit of antagonism to their church, religion or clergy has arisen, and recognise in a particular political party elements of danger to religion, they may use their influence to assert and maintain due respect to religion, and may express their opinion, in suitable language, that issues of great importance to religion are involved in a pending political contest (South Meath, 4 O'M. & H. 134). But a priest must not pass the bounds of legitimate influence (Galway, 1 O'M. & H. 307); he must exercise his just influence without denunciation and he has no privilege to violate or abuse the law, or to interfere with the rights and privileges of other subjects (Tipperary, 2 O'M. & H. 31)".

16. By far the best summary of the position of a Catholic priest and the influence which he can legitimately exercise is contained in a judgment of Fitzgerald J., in one of the cases cited above (Longford, 2 O'M. & H. 16). He said:—

"The Catholic priest has, and he ought to have, great influence. His position, his sacred character, etc., ensure it to him. In the proper exercise of that influence on electors the priest may counsel, advise, recommend, entreat, and point out the true line of moral duty, and explain why one candidate should be preferred to another, and may, if he thinks fit, throw the whole weight of his character in the scale, but he may not appeal to the fears, or terrors or superstition of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or of disadvantage, or of punishment hereafter. He must not threaten to excommunicate or withhold the sacraments".

17. The definition of undue influence with which we are concerned is the definition in the Representation of the People Act, 1951. Undue influence according to that definition is any direct or indirect interference or attempt to interfere with the free exercise of any electoral right. The definition also provides that without prejudice to the generality of its terms any person who:—

- "(i) threatens any candidate, or any elector, or any person in whom candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or
- (ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure".

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector.

18. The definition of the expression "electoral right" appears in Section 79(d) of the Representation of the People Act, 1951 and reads as follows:—

- "(d) 'electoral right' means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election".

19. It is clear from the judgments and statutory provisions mentioned above that the law does not strike at the existence of influence or its due exercise over others. Such influence is implicit in human personality and the advantages that wealth, education or a way of life may confer on an individual. It is only with the abuse of such influence that the law is concerned and it cannot be said that there has been an abuse simply because influence has been proved and its operation established.

20. We have perused Ex. B(1) with the greatest care and attention and we have come to the conclusion that it does not spell in the realms of undue influence.

21. We understood the petitioner himself as virtually admitting at the bar that a bare reading of Ex. B(1) will not disclose any infirmity. According to him what makes it objectionable is the fact that such pastoral communications are understood by the Catholic laity as mandatory injunctions with penalties for disobedience. Apart from the fact that there is nothing in Ex. B(1) to show that it embodies pastoral letters strictly so called, there is also no reliable evidence before us from which we can conclude that the disobedience of a pastoral letter involves or is understood to involve any punishment or social ostracism and excommunication.

22. We hold that the publication of Ex. B(1) does not amount to the exercise of undue influence.

23. *Issue No. 3.*—In the light of our finding on Issue No. 4, this issue does not arise for consideration.

24. *Issue No. 1.*—On the basis of our findings on Issues Nos. 2 and 4, the undue influence alleged to have been exerted by P.Ws. 19 and 20 alone arise for consideration. P.W. 19 is a parish priest attached to the St. Antony's Church at Vaduthale and P.W. 20 is the Vicar General of Verapoly.

25. Ex. C is a petition to His Grace the Archbishop of Verapoly by four parishioners of Vaduthala praying for a revision of the ruling of their parish priest to the effect that none of them is suitable to become the godfather of the child of one Pappu Vareed. The endorsement by P.W. 19 on the petition reads as follows:—

“I am instructed by the Venerable Curia not to allow those who worked for Aikyamunnani (United Front) to stand as patrons for baptism”.

The United Front is the electoral alliance which sponsored the petitioner's candidature and we have the admission of P.W. 20 that the instructions of the Venerable Curia referred to by P.W. 19 were issued by him in reply to a query by that priest.

26. Ex. C and the endorsement thereon are both subsequent to the date of the election and are dated the 30th December 1951. There is no evidence that similar instructions were issued prior to the date of the election and we are unable to find that Ex. C proves the exercise of any undue influence by P.Ws. 19 and 20 at the election on the 17th and 18th December 1951.

27. We also think that there is considerable force in the argument advanced by Mr. T. R. Balakrishna Iyer that the right to work for a political party is not an electoral right as defined in the Representation of the People Act, 1951 and hence any infringement thereof, even if proved, will not amount to the exercise of undue influence for the purposes of that enactment.

28. In dealing with this issue and all the other issues connected with the commission of any corrupt practice we have confined strictly to the particulars furnished in the list and omitted from taking into account either the vague allegations embodied in some portions of the petition or the pieces of evidence introduced for collateral purposes. Sub-section (2) of Section 83 of the Representation of the People Act, 1951 compel such a course. The petitioner's attention has been drawn to this matter even at the time the issues were settled and he has not chosen to seek and obtain any amendment under the provisions of sub-section (3) of Section 83.

29. The following is an extract from the proceedings dated the 30th August 1952:—

“The first respondent has filed written objections, a copy of which was served upon the petitioner yesterday. The issues that arise were considered and in the course of the discussion the last sentence of paragraph 5 of the petition which states that—

‘the Catholic clergy throughout the Constituency made propaganda speeches to this effect in all the parish churches and held out threats of excommunication to the Catholics if they supported or voted for the United Front candidate’

came up for consideration. In the list accompanying the petition no particulars are given as regards this allegation. We therefore asked the petitioner whether he wanted an opportunity to amend the list by supplying the said particulars. The petitioner stated that he wanted no opportunity to supply the particulars and was content to have the list as it is.....”

30. *Issue No. 5.*—In the light of our findings on Issues Nos. 1, 2 and 4, we hold that no undue influence has been proved to have prevailed at the election.

31. *Issue No. 6.*—In view of our findings on the previous issues, we answer this issue in the negative.

32. *Issue No. 7.*—There is no reason for departing from the normal rule governing the award of costs and we direct that the petitioner should bear his own costs and pay respondent No. 1 Rs. 500 by way of costs inclusive of advocates' fees and all expenses incidental to the defence of this petition.

33. In the result we dismiss the election petition with costs as aforesaid.

(Sd.) P. K. SUBRAMANIA IYER,
Chairman, Election Tribunal.

Dated this the 31st October 1952.

(Sd.) M. S. MENON,
Member, Election Tribunal.

(Sd.) ANNA CHANDY,
Member, Election Tribunal.

APPENDIX

EXHIBITS FOR THE PETITIONER

A. "Soviet Swargam".

B. "Sathyadeepam".

B(1) Passage on page 5 of Ex. B.

C. Petition by 4 parishioners of the Vaduthala Church.

D. Petition by a parishioner of the Kaloor Church.

E. Pamphlet entitled "Kiranangal 2".

F. Decree of the Sacred Congregation of the Holy See dated the 1st July 1949.

G. Extract of Circulation Register.

H. Pamphlet dated 14th December 1951.

Exhibits for the 1st respondent.

I. "Thiranjeduppu Prakatana Pathrika".

II. Election Manifesto.

III. Reply by Pandit Nehru.

IV. Memorandum submitted to the District Magistrate and Director of Public Relations by the Mar Louis Memorial Press, Ernakulam.

V & V(a). Quarterly Returns.

VI, VI(a), VII, VII(a) & VIII.	} Extracts from account books maintained by the Mar Louis Memorial Press.
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IX. Bundle of 424 Books (copies of Ex. A).

X. Bill slip.

XI. Statement regarding Pelling Booths in the Constituency.

XII & XIII. Statement regarding votes polled.

XIV. "Deshabhimani" dated the 5th January 1952.

Witnesses for the petitioner.

P.W.1. K. A. Xavier.

P.W.2. Chandy Ouso.

P.W.3. Joseph Mathew.

P.W.4. Thomas Mathew.

P.W.5. Perru Joseph.

P.W.6. T. J. Varghese.

P.W.7. Velayudhan Valdyar.

P.W.8. K. N. Alexander.

P.W.9. Pailey Varghese.

P.W.10. Lonan Titus.

P.W.11. Varkey Kuriako.

P.W.12. Abubaker Meerankunju.

P.W.13. P. T. Pappachan.

P.W.14. K. V. Antony.

P.W.15. V. J. Mathew.

P.W.16. C. A. Joseph.

P.W.17. Vakkachen Xavier.

P.W.18. M. J. Francis.

P.W.19. Rev. Fr. Joseph Symenthil.

P.W.20. Rev. Fr. Alexander Lanthaparambil.

P.W.21. Rev. Fr. George Kurisinkal

- P.W.22. K. L. Varkey.
P.W.23. Rev. Fr. Joseph Parekkattil.
P.W.24. M. T. Lazar.
P.W.25. John Manjooran.
P.W.26. Rev. Fr. Thomas Veluthedathu.
P.W.27. E. J. Mathew.
P.W.28. Dr. Bhaskaran (Bhaskavanal)
P.W.29. M. P. Menon (Petitioner).

Witnesses for the 1st respondent.

- C.P.W.1. T. T. Kuriakose (Foreman).
C.P.W.2. Alexander Parambithara.
C.P.W.3. M. A. Mathew.
C.P.W.4. P. T. Jacob.
C.P.W.5. P. T. Xavier.
C.P.W.6. G. S. Dharasingh.
C.P.W.7. P. Govindankutty Menon.
C.P.W.8. Rev. Fr. Shabore.
C.P.W.9. A. T. Raphael.
C.P.W.10. Kunji Pappu.
C.P.W.11. A. L. Jacob.
C.P.W.12. A. M. Thomas (1st respondent).

P. S. SUBRAMANIAN,
Officer on Special Duty.

